

# **EXHIBIT 149**

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

COPY

CHASOM BROWN, MARIA NGUYEN, AND ) C-20-03664 LHK  
WILLIAM BYATT, INDIVIDUALLY AND )  
ON BEHALF OF ALL SIMILARLY ) SAN JOSE, CALIFORNIA  
SITUATED, )  
 ) APRIL 29, 2021  
 )  
 ) PLAINTIFF, )  
 )  
 ) PAGES 1-44  
 )  
 ) VS. )  
 )  
 ) SEALED PROCEEDINGS  
 )  
 ) GOOGLE LLC AND ALPHABET INC., )  
 )  
 )  
 ) DEFENDANTS. )  
 )  
 )

TRANSCRIPT OF ZOOM PROCEEDINGS  
BEFORE THE HONORABLE LUCY H. KOH  
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S :

FOR THE PLAINTIFFS: SUSMAN GODFREY LLP  
BY: AMANDA K. BONN  
1900 AVENUE OF THE STARS, SUITE 1400  
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BY: ALEXANDER P. FRAWLEY  
1301 AVENUE OF THE AMERICAS, 32ND FLOOR  
NEW YORK, NEW YORK 10019

APPEARANCES CONTINUED ON NEXT PAGE

OFFICIAL COURT REPORTER: LEE-ANNE SHORTRIDGE, CSR, CRR  
CERTIFICATE NUMBER 9595

PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY  
TRANSCRIPT PRODUCED WITH COMPUTER

APPEARANCES (CONTINUED)

FOR THE PLAINTIFFS:

BOIES SCHILLER FLEXNER LLP

BY: MARK C. MAO

BEKO REBLITZ-RICHARDSON

44 MONTGOMERY STREET, 41ST FLOOR

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COMPLEX LITIGATION GROUP

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FOR THE DEFENDANT:

QUINN EMANUEL URQUHART & SULLIVAN

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BY: STEPHEN A. BROOME

VIOLA TREBICKA

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LOS ANGELES, CALIFORNIA 90017

BY: JOMARIE A. CRAWFORD

JOSEF ANSORGE

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BY: JONATHAN TSE

50 CALIFORNIA STREET, FLOOR 22

SAN FRANCISCO, CALIFORNIA 94111

1 MR. BROOME: YEAH. WE HAVE NO PROBLEM WITH DISCOVERY  
2 ON THESE ISSUES AND WE'VE HAD A LOT OF BACK AND FORTH WITH THEM  
3 AND WE'VE EXPLAINED OUR POSITION. BUT WE CAN'T PRODUCE WHAT WE  
4 DON'T HAVE.

5 AND YOUR HONOR ASKED A QUESTION, CAN GOOGLE TIE THESE  
6 PRIVATE BROWSING SESSIONS TO PLAINTIFFS' DEVICES? AND THE  
7 ANSWER TO THAT IS NO. WE DON'T -- THE COOKIES THAT ARE USED TO  
8 TIE THAT DATA TOGETHER -- AND MR. ANSORGE WILL CORRECT ME IF  
9 I'M WRONG -- THEY'RE DELETED AT THE END OF THE SESSION, THEY'RE  
10 DELETED FROM THE PLAINTIFFS' BROWSER, AND WE DO NOT HAVE THE  
11 INFORMATION TO IDENTIFY THE PLAINTIFFS' PRIVATE BROWSING  
12 SESSIONS.

13 I KNOW MR. MAO DOESN'T LIKE THAT, BUT THAT IS THE REALITY.  
14 AND WE'RE HAPPY TO HAVE DISCOVERY ON THIS ISSUE. THAT'S  
15 WHAT WE PROPOSED IN OUR COMPROMISE.

16 THE COURT: OKAY. THEN HERE'S WHAT WE'RE GOING TO DO  
17 WITH REGARDS TO REQUEST -- I GUESS IT'S RFP 18 AND RFP 10,  
18 WHICH IS PRODUCTION OF PLAINTIFFS' DATA, AS WELL AS PRODUCTION  
19 OF DATA TO IDENTIFY CLASS MEMBERS: WE'RE TAKING THESE  
20 TOGETHER, AND AS A FIRST STEP IN RESPONDING TO THAT, WE WILL BE  
21 FOCUSSED ON NAMED PLAINTIFFS, ON THE NAMED PLAINTIFFS.

22 AND ANY PRODUCTION THAT GOOGLE HAS MADE SO FAR WILL BE  
23 SUPPLEMENTED TO BE SURE THAT, FOR THE NAMED PLAINTIFFS, THAT  
24 ANY AUTHENTICATED DATA THAT GOOGLE HAS IS PRODUCED, AS WELL AS  
25 ANY -- AUTHENTICATED DATA, ANY IDENTIFIERS -- THAT IS, WHAT ARE

1 THE IDENTIFIERS FOR THAT DATA? IS IT USER? IS IT DEVICE? --  
2 AS WELL AS ANY UNAUTHENTICATED DATA TO THE EXTENT THERE IS ANY.

3 SO GOOGLE WILL PRODUCE THAT INFORMATION AND THEN THE  
4 PLAINTIFFS CAN REVIEW THAT AND IF YOU -- WHAT IS AND ISN'T  
5 THERE, AND THEN IF YOU -- I WILL ENTERTAIN A REQUEST FOR A  
6 FOCUSSED 30(B)(6) DEPOSITION ON THE IDENTIFICATION, ON THE USER  
7 IDENTIFICATION ISSUE.

8 MS. BONN: THANK YOU, YOUR HONOR.

9 THE COURT: ALL RIGHT. SO I WANT THAT INFORMATION --  
10 IT'S A PRETTY LIMITED NUMBER OF PEOPLE, SO LET'S GET THAT  
11 PRODUCTION UNDERWAY AND TO BE COMPLETED BY -- LET'S DO THAT BY  
12 MAY 12, AND THEN THE PARTIES WILL MEET AND CONFER -- PLAINTIFFS  
13 CAN REVIEW THAT, THE PARTIES CAN MEET AND CONFER FOR A  
14 SUBMISSION BACK TO ME ON THE 20TH IN ANTICIPATION OF  
15 RECONVENING IN FRONT OF ME ON THE 26TH.

16 MR. SCHAPIRO: AND, YOUR HONOR, THAT MAKES PERFECT  
17 SENSE.

18 CAN I JUST RESPOND TO ONE THING THAT MR. MAO SAID? AND I  
19 WILL TAKE 90 SECONDS AND THEN MOVE ON.

20 HE SAID HE HAS NOT HEARD GOOGLE SAY DURING THESE THREE  
21 HOURS THAT WE DO NOT TRACK PEOPLE IN PRIVATE BROWSING MODE.

22 I'M GOING TO SAY, WE DON'T TRACK PEOPLE IN PRIVATE  
23 BROWSING MODE.

24 NOW, AS EVERYONE KNOWS AND AS WE'VE EXPLAINED MANY TIMES  
25 IN THIS CASE, IF YOU'RE IN PRIVATE BROWSING MODE AND YOU HOP ON

1 AND YOU DO A SEARCH AND YOU GO TO THREE WEBSITES, GOOGLE WILL  
2 KNOW THAT SOME USER OR DEVICE WENT TO THOSE THREE WEBSITES AND  
3 THEN YOU ENDED THE SESSION AND THEN IT'S GONE. SO SOMETHING  
4 WENT TO THESE THREE WEBSITES.

5 SO, A, WE DON'T DO THAT.

6 B, WE HAVE A BIT OF A HAND TIED BEHIND OUR BACK HERE  
7 BECAUSE MR. MAO HAS BEEN SAYING HE BELIEVES THIS, HE BELIEVES  
8 THAT, THAT THERE'S SOMETHING SINISTER ABOUT THE WORDS TWICE --  
9 A BISCOTTI IS [REDACTED] OR THAT [REDACTED] IS A REPOSITORY OF ALL  
10 KINDS OF THINGS.

11 ONE OF THE CHALLENGES WE FACE HERE IS THAT THIS STUFF  
12 IS -- OUR TEXT CHAIN GOING ON HERE IS, LIKE, WHAT IS HE TALKING  
13 ABOUT? AND WE'RE ALL TRYING TO GUESS. WE HAVE NO IDEA HERE.

14 SO I WOULD INVITE PLAINTIFFS IN PARTICULAR, BEFORE WE END  
15 UP WITH WHERE WE WERE IN CALHOUN, WHICH IS AN ILL-BOUNDED  
16 30(B)(6) WHERE PEOPLE ARE TALKING PAST EACH OTHER, TO SERVE  
17 SOME WRITTEN DISCOVERY, AND THEY CAN ASK US, IS THERE SOMETHING  
18 SPECIAL ABOUT THE FACT THAT A BISCOTTI IS [REDACTED], OR  
19 WHAT'S KEPT IN [REDACTED]?

20 WE'LL ANSWER THAT, AND I THINK IT WILL BE MORE EFFICIENT  
21 FOR EVERYONE THAN SPINNING IN WHAT ARE, FRANKLY,  
22 CONSPIRACY-MINDED, UNFOUNDED THEORIES BASED ON SPECULATION OR  
23 NAMES OF COOKIES.

24 THAT'S ALL I'VE GOT.

25 THE COURT: ALL RIGHT. PLAINTIFFS WILL -- EXCUSE

1 ME -- DEFENDANTS WILL MAKE THE PRODUCTION AND THEN THE PARTIES  
2 WILL MEET AND CONFER, GET YOUR SUBMISSION TO ME FOR FURTHER --  
3 IF THERE'S NEED, WHICH I CERTAINLY ANTICIPATE THERE WILL BE --  
4 FOR FURTHER DISCOVERY ON THIS ISSUE.

5 BUT I DO EXPECT THE PARTIES, AS I SAY, TO MEET AND CONFER  
6 TO TRY TO ADDRESS THAT IN A CONSTRUCTIVE WAY.

7 ALL RIGHT. LET'S TURN TO THE OTHER DISPUTE -- THE NEXT  
8 DISPUTE THAT WAS -- THAT HAD SUBSEQUENT BRIEFING -- LET ME GET  
9 MY NOTES HERE IN FRONT OF ME -- AND THIS WAS ON THE SEARCH  
10 TERMS FOR THE CUSTODIANS, AND I'LL GIVE YOU MY RULINGS ON THIS.

11 I DID REVIEW IT. I REVIEWED THE PREVIOUS ESI ORDERS WITH  
12 REGARDS TO BOTH CUSTODIANS AND DOCUMENTS.

13 WITH REGARDS TO THE SEARCH TERMS FOR THE GOOGLE SELECTED  
14 CUSTODIANS, THE NUMBERS FROM THE PARTIES ARE KIND OF ALL OVER,  
15 SO IT WASN'T QUITE CLEAR TO ME HOW MANY TERMS HAVE BEEN RUN OR  
16 THAT GOOGLE HAS IDENTIFIED THAT IT IS WILLING TO RUN. AT ONE  
17 POINT IT APPEARED THAT IT HAD IDENTIFIED 92 TERMS, OR HAD  
18 PRODUCED -- OR SEARCHES, I SHOULD SAY -- HAD PROPOSED 100.

19 SO I'M -- IT'S NOT QUITE CLEAR TO ME WHAT IS THE STATUS  
20 WITH REGARDS TO CUSTODIAN SEARCHES FOR THE CUSTODIAN -- EXCUSE  
21 ME -- FOR THE GOOGLE SELECTED CUSTODIAN.

22 SO LET ME HEAR FROM GOOGLE FIRST. WHO HAS THIS ONE?

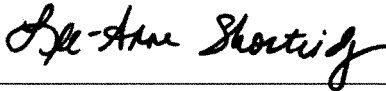
23 MS. CRAWFORD: I HAVE THIS ONE, YOUR HONOR. THANK  
24 YOU FOR THE QUESTION.

25 TO DATE, GOOGLE HAS AGREED TO RUN OVER 135 SEARCH TERMS

CERTIFICATE OF REPORTER

I, THE UNDERSIGNED OFFICIAL COURT REPORTER OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA, 280 SOUTH FIRST STREET, SAN JOSE, CALIFORNIA, DO HEREBY CERTIFY:

THAT THE FOREGOING TRANSCRIPT, CERTIFICATE INCLUSIVE, IS A CORRECT TRANSCRIPT FROM THE RECORD OF ZOOM PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

  
\_\_\_\_\_  
LEE-ANNE SHORTRIDGE, CSR, CRR  
CERTIFICATE NUMBER 9595

DATED: MAY 3, 2021